IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.1573/2002

Chandriya @ Ramchandra S/o Shri Birdhilal
Versus
State of Rajasthan through P.P.

Date of Judgment :::: 24th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Vinay Pal Yadav, Counsel for accused-appellant
Smt. Nirmala Sharma, P.P., for the respondent State
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By the Court:-

The only contention raised in this appeal by learned counsel for the accused-appellant is that the appellant has already remained in jail for a period of about 5 years and 2 months, therefore, his sentence of 7 years RI awarded by the trial court be reduced to a period of sentence of imprisonment already undergone by him, looking to the facts and circumstances of the present case.

The trial court has convicted and sentenced the accused-appellant Chandriya @ Ramchandra, vide its impugned judgment and order dated 17.10.2002 in Sessions Case No.11/2002 under Section 376 (1) of the Indian Penal Code, to undergo 7 years RI and a fine of Rs.10,000/-; in default of payment of fine, to further undergo six months' additional simple imprisonment.

The impugned order of conviction passed by the trial court against the appellant has rightly not been challenged by the learned counsel for the appellant in view of the statement of PW-3 Hanumanta @ Kalibai, PW-7 Dr. Rakesh Sharma and documents Exhibit P-6 (medical-report) and Exhibit P-8 (X-ray report), therefore, it is not necessary to refer and discuss the facts of the case in detail.

The only question remains for decision in the present case is whether the sentence of imprisonment awarded by the trial court should be reduced, or not.

I have heard learned counsel for both the parties and gone through the judgment of the trial court.

Admittedly, the prosecutrix was above 16 years of age. The incident relates to 12th March, 2002. The appellant was arrested on 21st March, 2002, and since then he is in judicial custody and has completed the imprisonment of 5 years and 2 months till now.

Under sub-section (1) of Section 376 IPC the minimum sentence of seven years is prescribed but it is subject to proviso that the court may, for adequate and special reasons, impose a sentence of imprisonment for a term of less than seven years.

In Prem Chand Vs. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that

case, the Hon'ble Supreme Court reduced the sentence of imprisonment of ten years awarded under Section 376 (2) IPC, to a period of sentence of imprisonment of five years. The State of Haryana filed review petition before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in (1990) 1 SCC 249 (State of Haryana v. Prem Chand & Others).

In Ram Kumar Vs. State of Haryana – (2006) 4 SCC 347, their Lordships of the Hon'ble Apex Court reduced the sentence of seven years under Section 376, IPC, to a period of three years imprisonment. Para No.3 of the judgment reads as under:-

> "3. The appellant, aggrieved by the order passed by the High Court has filed the above appeal by way of appeal. We have been taken through the statement and evidence recorded by the Court. Our attention was also drawn to the judgment passed by both the Sessions Court as well as the judgment passed by the High Court. The learned counsel for the appellant drew our attention to the statement of the girl Bimla (PW-5) and also drew our attention to the evidence of the doctor. We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to prove the guilt of the

> accused. However, at the time of hearing it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed by the High Court under Sections 366 and 376 of the Penal Code is on the highside. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly."

In the case of State of Chhattisgarh Vs. Lekhram (2006) 5 SCC 736 the Hon'ble Apex Court reduced the minimum sentence under Section 376, IPC, of seven years to a sentence of one-and-half-year imprisonment, already undergone by accused therein. Para 16 of the judgment reads as under:-

> "16. The prosecutrix was a mature girl. She was married. She spent a few months in her in-laws' place. The respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the

> question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The respondent preferred an appeal before the High Court in the year 1987. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the facts that both the courts have arrived at the conclusion that she was a consenting party, in our opinion, it may not be proper to send the appellant back to prison."

After considering all the facts and circumstances of the present case as well as the above referred judgments of the Hon'ble Apex Court, I think it fit and proper that ends of justice will meet in case the sentence of 7 years RI awarded by the trial court is reduced to a period of imprisonment of 5 years and 2 months, already undergone by the appellant.

Consequently, the appeal is partly allowed. The order of conviction passed by the trial court is

upheld, but the order of sentence is modified to the extent that the sentence of imprisonment awarded by the trial court is reduced to a period of 5 years and 2 months, already undergone by the appellant.

The appellant is in jail, therefore, it is directed that he be set at liberty forthwith in case his custody is not required in any other case.

(Narendra Kumar Jain) J.

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